

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Intentional Interruption of Commercial)	
Mobile Radio Service by Government)	GN Docket No. 12-52
Authorities for the Purpose of Ensuring)	
Public Safety)	

Comments
of
CellAntenna Corporation

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Summary

The Commission's inquiry presents a series of interrelated questions about whether and how the Commission could or should allow governmental entities to interrupt wireless services.

Over the last several years, CellAntenna has addressed each of the points of inquiry in filings before the Commission, the National Telecommunications and Information Administration ("NTIA"), and with various members of Congress. In 2010, Congress directed the NTIA, the FCC, the Bureau of Prisons ("BOP") and others to develop a plan for eradication of contraband wireless devices in prisons.

Two years later, the count of contraband wireless devices in every prison in the U.S. continues to grow. Because of the restrictions in Sections 301, 302a, and 333 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 301, 302a, and 333, corrections officials are powerless to do anything about it.

Under Section 10(a) of the Communications Act, 47 U.S.C. §160(a), the Commission is empowered to fix the problem. The Commission may forbear from enforcement of Sections 301, 302a and 333 in the restricted instance of interruption of the wireless service to contraband wireless devices attempting to operate illegally *inside* correctional facilities. Through this proceeding, CellAntenna urges the Commission to seize the opportunity and initiate proceedings to allow governmental entities, *to wit*, corrections officials, to interrupt signals inside their correctional facilities, in the public interest.

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CellAntenna Corporation (“CellAntenna”), by counsel, and pursuant to the Commission’s *Public Notice*, DA 12-52, released March 31, 2012, hereby submits its comments in favor of allowing intentional interruptions of Commercial Mobile Radio Service (“CMRS”) by government authorities for the purpose of ensuring public safety.

In support, CellAntenna submits:

A. CellAntenna

CellAntenna, Inc. (“CellAntenna”) is a family-owned U.S. company, based in Coral Springs, Florida. Since 2002, CellAntenna has led the industry in marketing and servicing communications devices. In the course of its business, CellAntenna has developed a special expertise in ferreting out contraband wireless devices within correctional facilities.¹ CellAntenna has developed sophisticated equipment which can interrupt the use of contraband wireless devices in correctional facilities with laser-like

¹ “Correctional facility” means any place for the confinement or rehabilitation of offenders or individuals charged with or convicted of criminal offenses. 42 U.S.C. § 3791

precision. CellAntenna's experience makes it uniquely qualified to inform the Commission in this proceeding.

B. The Commission's Inquiry

The Commission's inquiry presents a series of interrelated questions about whether and how the Commission could or should allow governmental entities to interrupt wireless services. In Part 1 of its inquiry, the Commission asked about experience with interruptions in service. Part 2 asked about why interruptions might be necessary or appropriate. Part 3 sought discussion of risks associated with interruptions in service. Part 4 asked about the scope of any proposed government interruption of service. Part 5 raised the issue of limitations on authority to interrupt wireless service, and relatedly, Part 6 asked about legal constraints on interruptions. Over the last several years, CellAntenna has addressed each of the points of inquiry in filings before the Commission, the National Telecommunications and Information Administration ("NTIA"), and with various members of Congress.

In 2010, Congress directed the NTIA, the FCC, the Bureau of Prisons ("BOP") and others to develop a plan for eradication of contraband wireless devices in prisons. Two years later, the count of contraband wireless devices in every prison in the U.S. continues to grow. Because of the restrictions in Section 301, 302a, and 333 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 301, 302a, and 333, corrections officials are powerless to do anything about it.

In contrast, under Section 10(a) of the Communications Act, 47 U.S.C. §160(a), the Commission is empowered to forbear from enforcement of Sections 301, 302a, and 333 in the restricted instance of interruption of the wireless service to contraband wireless

devices attempting to illegally operate *inside* correctional facilities. Through this proceeding, CellAntenna urges the Commission to seize the opportunity and initiate proceedings to allow governmental entities, *to wit*, corrections officials, to interrupt wireless service signals inside their own correctional facilities, in the public interest.

CellAntenna has worked with federal and state corrections authorities to eradicate the illegal use of contraband wireless devices in correctional facilities. The problem is well documented and growing. Regardless of the size, location, security level or design of the correctional facility, most have located and seized contraband wireless devices.

According to the *New York Times*, wireless devices are prohibited in all state and federal prisons in the United States, often even for top corrections officials.² The mere possession of a phone or a wireless device in a federal prison is a felony, punishable by up to a year of extra sentencing.³

Even so, the problem of contraband wireless devices persists. A recent editorial in the *Los Angeles Times* complained that “mass murderer and renowned psychopath Charles Manson was sending texts to folks outside prison walls using a flip phone that he kept hidden under his mattress.”⁴ Along with Mr. Manson’s flip phone, in the first six months of 2011, the California Department of Corrections and Rehabilitation (“CDCR”) confiscated more than Seven Thousand Two Hundred (7,200) contraband wireless devices within its correctional facilities.⁵ There is reason to believe this is just the tip of the iceberg.

² Severson, Kim and Robbie Brown, “Outlawed, Cellphones are Thriving in Prisons,” *The New York Times*, January 2, 2011.

³ Cell Phone Contraband Act, codified at 18 U.S.C. 1791(d)(1)(F).

⁴ “Cut Off Cellphones in Prison Cells,” *Los Angeles Times*, August 14, 2011.

⁵ Stanton, Sam, “California Prison Officials Shutting Down Inmates’ Facebook Pages,” *Sacramento Bee*, August 9, 2011.

Corrections authorities in the United States desperately wish to interrupt wireless services within each correctional facility to render contraband wireless devices unusable. CellAntenna applauds and appreciates the Commission's interest in whether and how governmental interruption of wireless services may be accomplished in these limited circumstances.

1. Past Practices and Precedents.

In February 2010, using equipment provided by CellAntenna, NTIA conducted a test on cell phone jamming equipment at a federal prison to support federal legislation allowing states to stop prisoners from using contraband cell phones.⁶ The test was conducted at the Federal Correctional Institution at Cumberland, Maryland.⁷

The test showed how precisely interruption to contraband wireless devices in correctional facilities can be accomplished – without causing interference beyond the correctional facility. Maryland Governor Martin O'Malley said, "The results of this first-ever test show that this technology did not impact the areas surrounding prisons..."⁸ Clearly, technology has progressed to a the point at which only transmissions within the correctional facility will be affected by interruption technologies.

The need for interruption of wireless services in correctional facilities is not unique to the U.S. In 2009, an inspector general for one of Great Britain's largest prisons

⁶ Sanders, Frank H. and Robert H. Johnk, "Emission Measurements of a Cellular and PCS Jammer at a Prison Facility,": NTIA Report TR-10-466, May, 2010, <http://www.its.bldrdoc.gov/pub/ntia-rpt/10-466/10-466.pdf> (accessed September 2, 2011).

⁷ O'Malley, Mikulski Continue Push to Jam Cellphones in Prisons, Washington Post, May 13, 2010, <http://voices.washingtonpost.com/crime-scene/the-criminal-mind/omalley-mikulski-continue-push.html>

⁸ "Senator Barbara Mikulski, Governor Martin O'Malley Urge Congressional Action on Cell Phone Jamming Legislation Following Results of Prison Test," May 12, 2010, accessed April 30, 2012 at www.governor.maryland.gov/pressreleases/100512b.asp

called for authority to interrupt wireless signals.⁹

Since then, UK edition of *The Week*, reported in January 2012, that two notorious prisoners escaped from custody. Each of their escapes was believed to have been facilitated by contraband wireless devices.¹⁰

Recently, France enacted a law which generally prohibits the operation of signal jammers, but allows the use of them for the purposes of public order, defense and national security, or public service of justice.¹¹

Ireland, Italy, New Zealand, and Sweden also allow the interruption of signals in correctional facilities in the interest of public safety. Each of these countries acted to eradicate a threat to the safety of its citizens.

The public safety is put at risk when contraband wireless devices are used by inmates to plan escapes from prison, harass victims or find new ones, or continue criminal activities from behind bars. Contraband wireless devices have been used to aid an inmate's escape from a Kansas prison,¹² to threaten innocent civilians,¹³ to organize a strike among inmates at several Georgia prisons,¹⁴ to approve targets for robberies.¹⁵

Correctional officials note that so-called smart phones have ramped up the stakes by offering Internet access. With a smart phone, "a prisoner can call up phone

⁹ Jam Mobile Signals in Prisons, Says Inspector, *BBC News*, accessed April 28, 2012 at <http://news.bbc.co.uk/2/hi/8373557.stm>.

¹⁰ "Could Jamming Prison Phones Have Stopped John Anslow?", Hollie Clemence, *The Week, UK Edition*, Jan. 26, 2012. Accessed on April 28, 2012 at <http://www.theweek.co.uk/uk-news/44734/could-jamming-prison-phones-have-stopped-john-anslow>.

¹¹ Article L33-3-1, Amended by Order No. 2011-1012 of 24 August 2011 - art. 40.

¹² Burke, Tod W., Ph.D. and Stephen S. Owen, Ph. D. , "Cell Phones as Prison Contraband," *FBI Law Enforcement Bulletin*, citing Thompson, Don, "Prisons Press Fight Against Smuggled Cell Phones," *ABC News*, <http://abcnews.go.com/Technology/wireStory?id=7332293>

¹³ *Id.*, citing Graczyk, Michael, "Texas Prisons Locked Down After Death-Row Inmate Found with Phone", *CorrectionsOne*, <http://www.correctionsone.com/corrections/articles/1747630-Texas-prisons-locked-down-after-death-row-inmate-found-with-phone> (accessed August 30, 2011).

¹⁴ Severson, Kim and Robbie Brown, "Outlawed, Cellphones are Thriving in Prisons," *The New York Times*, January 2, 2011.

¹⁵ *Id.*

directories, maps and photographs for criminal purposes ... Gang violence and drug trafficking ... are increasingly being orchestrated online, allowing inmates to keep up criminal behavior even as they serve time.”¹⁶

If wireless service is interrupted, contraband wireless devices will not work. If the devices do not work, the threat to public safety occasioned by contraband wireless devices within the zone of the interruption is stopped in its tracks.

In the U.S., interruption of wireless service is prohibited by Sections 301, 302a, and 333 of the Communications Act. Although several petitions for relief from these restrictions have been filed with the FCC, and corrections officials have lobbied Congress for relief, no exception has been created. This inquiry is a perfect beginning of the process toward forbearance, on the Commission’s own motion, to allow limited interruptions of service to eradicate the illegal use of contraband wireless devices within correctional facilities.

2. Bases for Interrupting Wireless Service.

In December, 2009, Congress directed NTIA to develop a plan to investigate and evaluate wireless jamming, detection, and other technologies that might be used to prevent contraband cell phone use by prison inmates. In May, 2010 NTIA issued a Notice of Inquiry (“NOI”) on the use of contraband Cell Phones in Prisons.¹⁷ In its NOI, NTIA acknowledged the challenge faced by corrections officials and asked for comments on various technological approaches to help corrections officials block or reduce unauthorized use of wireless devices by inmates.

¹⁶ *Id.*

¹⁷ Preventing Contraband Cell Phone Use in Prisons, Docket No. 100504212-0212-01, 75 Fed. Reg. 26733 (May 12, 2010).

It is undisputed that the possession and use of contraband wireless devices in correctional facilities is a problem. It is also undisputed that interruption of wireless services on the premises would effectively eradicate the problem of the use of contraband wireless devices in correctional facilities.

Generally, wireless devices are illegal in correctional facilities. They are disallowed twenty-four hours each day of the year. Ideally, correctional facilities would interrupt wireless services to contraband wireless devices full time, twenty-four hours each day of the year, but would limit the interruption in geographic scope. Correctional facilities would interrupt wireless services through the use of a jamming device or through managed access.

NTIA described jamming as “the deliberate radiation, re-radiation, or reflection of electromagnetic energy for the purpose of disrupting use of electronic devices, equipment, or systems.”¹⁸ A jamming device transmits on the same radio frequencies as the wireless device, disrupting the communication link between the phone and the wireless base station, essentially rendering the wireless device unusable until the jamming stops.

Managed access exercises some discretion before interrupting service to and from a wireless device. Managed access denies access to the wireless network to wireless devices not known to be legitimate. The service is unusable until the device is determined to be legitimate, if it ever is.

Whether interrupted by jamming or managed access, for so long as the wireless device is unusable, the public is safe from the havoc that a wireless-enabled inmate might wreak on unsuspecting victims.

¹⁸ 75 Fed. Reg. 26734.

3. Risks in Interrupting Wireless Service.

CMRS providers oppose the use of interruption technology. Although each of them expresses its opposition uniquely, generally, each of them claims that if interruption technology is authorized, wireless networks will fail to operate properly and calls – particularly public safety calls – will not be completed because of interference from operation of interruption technology.

CellAntenna notes that the CMRS providers' fears are ill-founded. NTIA recently conducted a test of jamming equipment.¹⁹ As the report demonstrates jamming equipment is both effective and harmless to non-targeted devices. The NTIA report found that the interruptions to the signal could be limited to the geographic area inside the correctional facility. Further specific recommendations were made to support the future use of interruption technology.

In addition to interruption technologies, detection technologies are also used to combat contraband wireless devices in corrections facilities. Detection has been described as the process of locating, tracking, and identifying various sources of radio transmissions. Detection triangulates a wireless device signal and requires the use of correctional staff to physically search a small area – a prison cell – to seize the identified contraband wireless device.

Detection might be an effective means to eradicate contraband wireless devices in correctional facilities *if* there were a requirement that any device identified as contraband were deactivated or otherwise rendered useless. Without the follow-on deactivation of

¹⁹ Sanders, Frank H. and Robert H. Johnk, "Emission Measurements of a Cellular and PCS Jammer at a Prison Facility,": NTIA Report TR-10-466, May, 2010, <http://www.its.bldrdoc.gov/pub/ntia-rpt/10-466/10-466.pdf> (accessed September 2, 2011).

the device, Detection is worthless. Some form of interruption is necessary to stop the illegal use of contraband wireless devices in correctional facilities.

4. Scope of Interruption

The use of wireless devices inside correctional facilities is generally prohibited at all times. For that reason, the proposed the governmental entity, the correctional officials, would interrupt wireless signals on the premises at all times. Because it would be a complete service interruption, the interruption would prohibit 911 calls using contraband wireless devices.

In each instance, the interruption would be limited to a very small geographic area – the correctional facility. Because of the geographic limit, the unavailability of 911 service can be a risk assumed and managed by the corrections facility.

5. Authority to Interrupt Service

The decision to block use of contraband wireless devices may be made by the Warden for each specific correctional facility. None of the concerns about authority to interrupt attendant to occasional interruptions arise in this context.

6. Legal Constraints on Interrupting Wireless Service

Title 18 of the U. S. Code has been amended to criminalize possession of a wireless device in a federal correctional facility. Most states have similar laws. Interruptions to wireless services violate Sections 301, 302a, and 333 of the Communications Act.

In October 2009, the U.S. Senate passed the Safe Prisons Act of 2009 that would have amended the Communications Act of 1934, as amended, to authorize the FCC to

permit the correctional facilities to interrupt wireless services within the correctional facility. The U.S. House of Representatives did not act on the legislation.

The time is right for the Commission to exercise its authority under Section 10 of the Communications Act and forbear from enforcement of Sections 301, 302a, and 333 of the Communications Act, specifically to allow correctional facilities to interrupt wireless services within the correctional facility to prevent the use of contraband wireless devices.

The Commission may forbear to allow interruption of wireless service on the premises of correctional facilities. There is no first amendment right to use a wireless device inside a correctional facility. The United States Supreme Court has determined that the needs of prison security justify a more deferential standard for prison regulations restricting incoming material, whether those incoming materials are correspondence from other prisoners, correspondence from nonprisoners, or outside publications.²⁰

Because of the particular challenges administrators face running prisons, earlier this month, in *Florence* decision, the Supreme Court acknowledged there is a compelling government interest which warrants limiting prisoners' rights. Courts have been deferential to prison officials' assessments of security threats, and sensitive to their related regulatory decisions, even if such decisions impact inmates' Constitutional rights.

The Commission must join in the concern for the safety of the brave women and men who maintain our nation's correctional facilities and forbear from enforcement of Sections 301, 302a, and 333 of the Communications Act, so that correctional facilities may interrupt wireless service only on the premises of the correctional facility.

²⁰ *Thornburg v. Abbott*, 490 US 401, 411-14 (1989), *see also*, *Florence v. Board of Chosen Freeholders of County of Burlington, et. al.*, No. 10-945, ___ US ___ (2012).

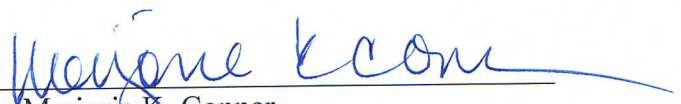
C. The Commission Should Seize this Opportunity to Forbear from Enforcement of Section 333 for the Limited Purpose of Allowing Correctional Facilities to Interrupt Wireless Signals on Their Own Premises.

The Commission asked for comment on interruption to wireless services by governmental entities. No greater need for interruption exists than the need to interrupt wireless services on the premises of correctional facilities to render useless the many contraband wireless devices extant in our correctional facilities throughout the U.S.

CellAntenna is uniquely situated to inform the Commission on this concern. Interruption of the wireless service is the most efficient means of ending the abuse. CellAntenna asks that the Commission consider the comments presented here and exercise its authority under Section 10 of the Communications Act and forbear from enforcement of Sections 301, 302a, and 333, so that correctional facilities might interrupt service to contraband wireless devices on their premises.

Respectfully submitted,

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